

No. 5789-4Lab-75/19279.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Universal Refrigeration Industries, Bahadurgarh.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 146 of 1974

between

SHRI MOHINDER SINGH WORKMAN AND THE MANAGEMENT OF M/S UNIVERSAL
REFRIGERATION INDUSTRIES, BAHADURGARH (ROHTAK)

Present:

Shri Onkar Parshad for the workman.
Shri R. C. Sharma, for the management.

AWARD

Shri Mohinder Singh workman concerned was in the service of M/s Universal Refrigeration Industries, Bahadurgarh (Rohtak). He was brought under retrenchment with effect from 11th December, 1973. Feeling aggrieved, he raised a demand for reinstatement contending that the retrenchment was illegal and inviolation of the requirement of law and as such he was not bound by the same and was entitled to reinstatement. The management did not accept this demand. This gave rise to an industrial dispute. The matter was taken up for conciliation which also ended in failure.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana,—vide Order No. ID/RK/166-D-74/32834, dated 20th September, 1974 referred the dispute for adjudication to this Tribunal, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 with the following term of reference:—

Whether the retrenchment of Shri Mohinder Singh was justified and in order? If not, to what relief is he entitled?

The parties put in their respective pleadings. The management contented the claim of the workman for reinstatement alleging that the retrenchment had been brought about in accordance with the provisions of the law. It was further contended that the demand, the subject-matter of the reference, had not been first raised on the management and rejected by it.

The pleadings of the parties gave rise to the following issues:—

- (1) Whether the demand, the subject-matter of the present reference was first raised on the management and rejected by it before taking up the matter for conciliation? If not, with what effect? (on workman) (onus objected to).
- (2) Whether the retrenchment of Shri Mohinder Singh was justified and in order? If not, to what relief is he entitled?

The management has examined Shri Radhey Sham Clerk of the establishment M. W. 1, and reliance has been placed upon several documents, namely, application, dated 4th December, 1973 of the workmen Ghuna Sharma and Daya Nand, Exhibit M. 1 and the other application of the present workman Shri Mohinder Singh, Exhibit M. 2, copies of the vouchers of the payment of dues to him Exhibit M-3, M-4, M-5, M-6, M-7, M-8, copy of the demand notice, dated 4th December, 1973, Exhibit M-9.

On behalf of the workman concerned Shri Onkar Parshad his authorised representative has come into the witness box as W. W. 1 and the workman Shri Mohinder Singh has made his own statement Exhibit W. W. 2. The documentary evidence relied upon by the workman consists of the demand letter, dated 3rd January, 1974 Exhibit W. 1 which was received by the workman on 4th January, 1974, copy of the award, dated 23rd February, 1971, Exhibit W-2, Comments of the management filed before the Conciliation Officer Exhibit W-3, demand notice dated 4th December, 1973 Exhibit W-4, letter of retrenchment issued by the management Exhibit W-5.

The case has been argued on both sides and I have given a careful thought to the material on record. As already observed Shri Mohinder Singh workman concerned has questioned the validity of his retrenchment. From the perusal of the evidence on record it appears that the management had first laid off several workers including Shri Mohinder Singh and feeling aggrieved they had made applications Exhibit M-1 and M-2. Exhibit M-2 being the application of Shri Mohinder Singh workman himself, that instead of being laid off they should have been retrenched if there was no work for them. This has been mentioned in the demand notice dated 4th December, 1973 Exhibit M-1 on record.

In view of all this evidence on record the workman concerned cannot be heard to say that his retrenchment was invalid. As a matter of fact, he had himself requested for retrenchment along with workman who had been laid off by the management for want of work in the factory.

The evidence produced by the management consisting of true copies of the vouchers Exhibit M-3 to Exhibit M-8 further proves that full retrenchment compensation and notice pay for one month had been paid to the present workman. He has stated that this amount was received by him under protest and against his wishes. This plea as such has not been taken either in the demand notice or in the statement of claim filed in the case. The law is well-settled on the point. The parties cannot travel beyond their pleadings and no evidence can be looked into a plea which has not been specifically raised. It has further not been shown that the amount paid to Shri Mohinder Singh workman concerned, —vide vouchers copy Exhibit M-2, M-8 in any way fell short of the amount due to him by way of retrenchment compensation etc. The retrenchment of the workman having thus been brought about on his own request and full amount of compensation, notice pay etc. having been paid to him and the same having been received by him without any protest, it cannot be held that the management had in any way contravened the provisions of section 25-F of the Industrial Disputes Act, 1947 in bringing about the retrenchment in question of the present workman. That disposes of issue no. 2 which for the reasons aforesaid, is decided against the workman and in favour of the management. Nothing worth consideration has been urged, on behalf of the management with regard to issue No. 1. The management has itself produced copy of the demand notice, dated 4th December, 1973 and another demand notice dated 3rd January, 74 has been produced by the workman which read together clearly establish that before taking up the matter for conciliation by means of the demand notice, dated 4th January, 1974, which forms part of the present reference the demand had directly been raised on the management and that was enough to constitute an industrial dispute within the meaning of the law. In the circumstances, it cannot be said that the demand had not been first raised on the management and rejected by it as required under the oft-quoted Judgement of the Hon'ble the Supreme Court in the Sindhu Resettlement Corporation case. The issue is decided against the management and in favour of the workman.

In view of my above finding against the workman on issue No. 2 as per the term of reference that the retrenchment had been brought about on the request of the workman himself because there was no work in the factory. The workman has no well founded case to question the validity of the retrenchment and the full amount of service compensation, notice pay etc. having been received by him is not entitled to any other relief.

The award is accordingly made holding the impugned retrenchment of Sh. Mohinder Singh, the workman concerned, to be justified and in order and, in the result, he is not entitled to any relief by way of reinstatement or payment of any back dues. There shall, however, be no order as to costs.

Dated 8th May, 1975.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 940, dated 2nd June, 1975

Forwarded (four copies,) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 3th May, 1975.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 20th June, 1975

No. 5801-4Lab-75/19277.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Ego Metal Works (P) Ltd., Gurgaon.—

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Application No. 1 of 1975

between

SHRI VASDAV WORKMEN AND THE MANAGEMENT OF M/S EGO METAL WORKS (P) LTD; GURGAON

Present:

Shri Onkar Parshad, for the management.
Nemo, for the workmen.

AWARD

The following dispute between the management of M/s Ego Metal Works (P) Ltd; Gurgaon and its workman Shri Vasdev was referred for adjudication to this Tribunal, —vide order No. ID/GG/22-1-70/50077, and 7th December, 1970 of the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947.

Whether the retrenchment of Shri Vas Dev was justified and in order? If not, to what relief is he entitled ?

After considering the evidence led on both sides and hearing the parties the award was made in favour of the workman on 28th May, 1971 setting aside his retrenchment and entitling him to reinstatement with continuity of his previous service and payment of full back wages. The award was published in the State Gazettee.

After the award became enforceable, the workman concerned brought an application under section 33(c)(2) for computation of his dues in terms of the said award. In the application the respondent employer was described as M/s Ego Metal Works Gurgaon. A preliminary objection was raised that this description was wrong as the correct description was M/s Ego Metal Works (P) Ltd; Gurgaon.

The parties were heard on this point and the contention raised on behalf of the respondent employer having prevailed the application in the form presented by the applicant was held to be not amintanable. A persual of the award given by this Tribunal referred to above, however, discloses that by inadvertance the description of the management in the award itself was given as M/s Ego Works, Gurgaon and not M/s Ego Metal Works (P) Ltd; Gurgaon as mentioned in the order of reference. This was apparently a clerical error which has to be corrected to avoid comprication in the matter of enforcement of the award. I, therefore, in exercise of the powers conferred under rule 28 of the Industrial Disputes Rules direct that instead of M/s Ego Metal Works Gurgaon the description of the management be given as M/s Ego Metal Works, (P) Ltd; Gurgaon and after this correction in the award four copies of the award be submitted to the Government for publication in the State Gazette as required by law.

Dated the 28th May, 1975.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 929, dated 31st May, 1975.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 31st May, 1975.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No 135 of 1970

Between

SHRI VASDEV WORKMAN AND THE MANAGEMENT OF M/S EGO METAL WORKS,
(P) LTD., GURGAON

Present:—

Shri Vasdev concerned workman with Shri Onkar Parkash authorised representative.
Shri Raminder Singh Chawala, Administrative Manager with Shri D. C. Chadha for the management.

AWARD

Shri Vasdev concerned workman had been in the service of M/s Ego Metal Works, (P) Ltd, Gurgaon, since 6th July, 1966. The management brought him under retrenchment with effect from 1st July, 1970,—vide retrenchment notice, dated 6th May, 1970 Ex. M. W. 1/1. Feeling aggrieved, he approached the management for his reinstatement contending that his retrenchment from service was illegal. The management, however, did not accede to his request. He, therefore, took up the matter before the Concillation Officer, Gurgaon,—vide demand notice dated 9th July, 1970 but without any success.

On receipt of the failure report from the Conciliation Officer, Gurgaon, the Governor of Haryana, in exercise of the powers conferred under clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal *vide* order No. ID/GG/22-1-70/50077, dated 7th December, 1970—.

Whether the retrenchment of Shri Vasdev was justified and in order? If not, to what relief is he entitled?

On receipt of the reference, notices were given to the parties and they filed their respective written statements. In the claim statement put in on behalf of the workman on 1st February, 1971, it was urged that his retrenchment was in violation of the provisions of section 25F of the Industrial Disputes Act, 1947, since the retrenchment compensation due to him had not been paid in full. It was further urged that he had been brought under retrenchment previously also but on raising the dispute he had been reinstated on payment of full backwages and that he was entitled to the same relief on account of his illegal retrenchment now.

The management filed the written statement on 14th February, 1971, with the allegations that the present workman was the juniormost in his category and he had been paid all his legal dues at the time of retrenchment. It was further urged that he was not the only worker brought under retrenchment and a large number of workmen had been retrenched due to shrinkage of work and shortage of material. The management had also raised a preliminary objection that the dispute had not been properly espoused and Shri Onkar Parshad the union leader had no valid authority to raise the demand on behalf of the workman. In the rejoinder filed on behalf of the workman on 18th March, 1971 the above contentions were disputed and the claim of the workman for reinstatement with continuity of service and full back wages was reiterated.

The aforesaid preliminary objection was, however, not pressed on behalf of the management obviously because the present dispute was covered by section 2-A of the Industrial Disputes Act which entitled an individual worker to raise a dispute against his dismissal, retrenchment etc. even though no other workman or union had sponsored the dispute. So, the only issue that arose for determination in the case was precisely the same as per the term of reference and no other issue was claimed.

The management has examined Shri Raminder Singh Chawala, Administrative Manager and reliance has been placed upon documents including the retrenchment notice Ex. M.W.1/1, receipt of payment of Rs 241 to Shri Vasdev Ex. M.W.1/2, copy of the intimation sent to the Government regarding retrenchment Ex. M.W.1/3 *vide* postal receipt Ex. M.W. 1/4, and A. D. receipts Ex's M.W.1/5 to M.W.1/9, seniority list of semi-skilled (b) group workers Ex. M.W. 1/10, receipt of payment of Rs 6 to Shri Vasdev on account of increment as from 1st May, 1970 Ex. M.W.1/11.

Shri Vasdev concerned workman has himself come into the witness box and produced a copy of the failure report submitted by the Conciliation Officer, Gurgaon to the Government leading to the present reference.

I have heard the learned representatives of the parties and considered the facts on record. It is common ground between the parties that Shri Vasdev had put in 4 years service as a semi-skilled workman before he was brought under retrenchment with effect from 1st July, 1970. He has challenged the retrenchment mainly on two grounds, firstly, that there was no justification for his retrenchment as workers junior to him had been retained in service and, secondly; that retrenchment compensation due had not been paid in full by the management. The management has not been able to refute the above contentions successfully. A perusal of the seniority list Ex. M.W. 1/2 read with the statement of the Administrative Manager Shri Raminder Singh Chawala, M.W. 1 would show that several other workers who were junior to Shri Vasdev and were getting lesser wages had been retained in service. It has been urged on behalf of the management that these other workers were of semi-skilled 'A' category whereas Shri Vasdev belonged to semi-skilled (b) category of the workers. But all were admittedly semi-skilled workers and it has not been explained on what basis the two categories of the workers had been formed and what was the justification for treating Shri Vasdev junior to other workers in the matter of retrenchment. He has made a categorical statement that he was capable of and had been working on the types of machines where the other workers junior to him had been working. It would thus appear that the well recognised principle of "first come last go" had not been observed by the management while bringing this workman under retrenchment.

The retrenchment order of Shri Vasdev has got to be struck down on another important ground also. According to him, the retrenchment compensation due was not paid in full at the time of retrenchment. Shri Raminder Singh Chawala has admitted in so many words that Shri Vasdev had earned an increment of Rs 6 with effect from 1st May, 1970 raising his wages to

Rs 126 P. M. But he was paid at the rate of Rs 120 P. M.,—vide receipt Ex. M.W. 1/2. He was paid an increment of Rs 6 for the month of May, 1970 on 1st July, 1970,—vide receipt Ex. M.W. 1/11. But this amount of increment was not paid to him for the month of June, 1970. Similarly the retrenchment compensation paid to him taking into consideration the length of his continuous service which was 4 years was admittedly less by Rs 12. An attempt has been made on behalf of the management to explain that Shri Vasdev was offered the increment of Rs 6 for the month of June, at the time of his retrenchment but he had refused to accept the same. There is, however, no evidence to support his contention. It has, further been stated by Shri Raminder Singh Chawala, M.W. 1 that the papers regarding increments of the workers were put up in routine which took time to settle and since the retrenchment of Shri Vasdev had been brought about in the mean time, the amount due on account of increment was not included in the retrenchment compensation paid to him. But that was no fault of the workman. He had admittedly earned the increment of Rs 6 with effect from 1st May, 1970 thus raising his wages to Rs 126 P.M. and the increment for the month of May, 1970 was admittedly paid to him on 1st July, 1970,—vide receipt Ex. M.W. 1/11. It has not been explained as to why the amount of the increment for the month of June, 1970 and service compensation amounting to Rs 12 was also not paid on the due date. The management had apparently no difficulty in working out the full amount of retrenchment compensation payable to Shri Vasdev. At any rate, the fact remains that there was no compliance with the mandatory provisions of section 25F(b) of the Industrial Disputes Act, 1947, with regard to the payment of retrenchment compensation and as such, the retrenchment of Shri Vasdev cannot be held to be justified and in order. The issue is accordingly decided against the management.

In view of the above claim of Shri Vasdev is well founded and he is entitled to reinstatement with continuity of his previous service and full back wages and I make my award accordingly. In the circumstances, there shall be no order as to costs.

O. P. SHARMA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Dated 28th May, 1975.

No. 929, dated 31st May, 1975

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

Dated 31st May, 1975.

The 20th June, 1975

No. 5802-4Lab-75/19273.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the Management of M/s The Panipat Co-operative Sugar Mills Ltd., Panipat.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

Reference No. 78 of 1973

between

SHRI KARAN SINGH, WORKMAN AND THE MANAGEMENT OF M/S THE PANIPAT
CO-OPERATIVE SUGAR MILLS LTD., PANIPAT

Present:—

Shri Madhu Sudan Saran Cowshish, for the Workman,

Shri Roshan Lal Gupta and Shri Surinder Kaushal, for the management.

AWARD

Shri Karan Singh an employee of M/s Panipat Co-operative Sugar Mills Ltd., Panipat raised demand for promotion as Superintendent which was not accepted by the management. Feeling aggrieved, he gave the demand notice on which conciliation proceedings were initiated which, however, ended in failure.

On receipt of the failure report from the Conciliation Officer, the Governor of Haryana, referred the dispute for adjudication to this Tribunal vide order No. ID/KNL/13-B-72/19220, dated 7th June, 1973, in exercise of the powers conferred by clause (d) of sub section (1) of section 10 of the Industrial Disputes Act, 1947 with the following term of reference.

Whether Shri Karan Singh should be promoted to the post of Cane Superintendent ? If so, with what details ?

Usual notices were given to the parties and they put in their respective pleadings. The workman alleged that he had been appointed Deputy Cane Superintendent in March, 1968 but thereafter he had been discharging the duties of the Cane Superintendent faithfully and efficiently but his request for being appointed as Cane Superintendent was illegally turned down by the management and hence this reference. The management contested his claim on merits besides raising preliminary objection that the question of promotion to a higher post was entirely the function of the managements and since, Shri Karan Singh was discharging duties in supervisory capacity and drawing emolument over Rs 500 P.M. he was not a workman as defined under section 2(s) of the Industrial Disputes Act, 1947 and the reference was bad in law.

From the pleadings of the parties, the following three issues arose for determination in the case.

- (1) Whether the order of reference does not constitute an industrial dispute because the applicant Shri Karan Singh was exclusively working in a Supervisory capacity and was drawing emoluments more than Rs. 500 P.M.
- (2) Whether the question of Promotion to higher categories is solely the managements functions and this Court has no jurisdiction in the matter ?
- (3) Whether Shri Karan Singh should be promoted to the post of Cane Superintendent ? If so, with what details ?

The Management has examined Shri N. L. Batra, Office Superintendent who has deposed with reference to three documents. Notification of the State Government Exhibit M. W. 1/1 describing the position and status of the workman concerned leave applications Exhibit M. W. 1/2 and Exhibit M.W. 1/3 of other workman Sarvshri Gopal Krishan and Manga Ram sanctioned by the present workman. In his supplementary statement Shri N. L. Batra has further deposed that Shri Karan Singh is getting fixed T. A. at Rs. 100 P. M.

Shri Karan Singh besides himself coming into the witness box has examined Shri Ram Dhan Maur, General Secretary, Karamchhari Union Sugar Mills Panipat W. W. 1. Shri Ram Dhan Maur has stated that he is working as Deputy Cane Superintendent, and as per rules a fixed T. A. amount of Rs. 100 given to Shri Karan Singh. According to Shri Karan Singh, his designation is Deputy Cane Superintendent, and his duties are to go to the fields, check the qualities of the Sugar Cane, make necessary arrangements for the spray of medicines and in this connection he has to cover miles and miles on some days. He has further stated that he has to work in the office also for the preparation of survey statements and his work is supervised by the Cane Superintendent. He has denied the plea of the management that he is competent to grant or refuse leave to other workmen. He has, however, admitted his signatures on the leave applications Exhibit M. W. 1/2 and M. W. 1/3.

The case has been argued on both sides and I have given due consideration to the facts on record. As would be clear from the very term of the reference, the case of Shri Karan Singh claimant is for promotion to the post of Cane Superintendent, his present post being that of a Deputy Cane Superintendent. It has been vehemently argued on behalf of the management that promotion of a worker to a higher post is primarily the function of the management and the Industrial Tribunal Labour Court have no jurisdiction in the matter. The contention does not appear to be without force and the learned representative of the workman has not been able to satisfy me to the contrary. It is an established law that the management has the right to promote a workman to a higher post taking into consideration his seniority, performance and suitability to the higher post. In the instant case, there is no indication that persons junior to Shri Karan Singh had been promoted to the higher post claimed by him ignoring his right. Even if that be so the Industrial Tribunal Labour Court can not direct promotion of a workman to higher post, it can only recommend or ask the management to re-consider the case of particular workman on merits.

So, in the context of the facts on record, which are more or less admitted, and for the reasons aforesaid, I am quite clear in my mind that this Tribunal can not go into the question of the promotion to the higher post asked by Shri Karan Singh which is primarily the function of the management itself and for that reasons the present reference is bad in law and stands to be rejected. Issue Nos. 1 and 2 are accordingly decided against the workman.

In view of my above findings on issue Nos. 1 and 2, Issue No. 3 becomes redundant for the simple and obvious reason that the reference is bad in law and this Tribunal has no jurisdiction to award the relief of promotion to higher post asked for by Shri Karan Singh claimant. The award is accordingly made but without any order as to costs.

Dated the 29th May, 1975.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 942, dated 2nd June, 1975

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated the 2nd June, 1975

M. SETH; Com. & Secy.